

consideration of the issues, is not unduly costly or burdensome, will not unduly delay the proceeding, and does not seek privileged information. The ALJ may grant discovery subject to a protective order under § 26.43. The request for approval sent to the Attorney General from the General Counsel or designee, as described in § 28.20 of this title, is not discoverable under any circumstances.

(c) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying. Nothing contained herein shall be interpreted to require the creation of a document.

(2) Requests for admissions.

(3) Written interrogatories. Such interrogatories shall be limited in number to 25, unless otherwise ordered by the ALJ.

(4) Depositions.

(d) *Motions to compel.* A party may file a motion to compel discovery. The motion shall describe the information sought, cite the opposing party's objection, and provide arguments supporting the motion. The opposing party may file a response to the motion, including a request for a protective order. The ALJ may issue an order compelling a response, issue sanctions pursuant to § 26.36, or issue a protective order. For purposes of paragraph (d) of this section, an evasive or incomplete answer to a request for discovery is treated as a failure to answer.

(e) Each party shall bear its own costs of discovery.

#### § 26.42 Subpoenas.

(a) *General.* Upon written request of a party, the ALJ may issue a subpoena requiring the attendance of a witness at a deposition or hearing, and/or the production of documents. The request shall specify any documents to be produced and shall list the names and addresses of the witnesses.

(b) *Time of request.* A request for a subpoena in aid of discovery shall be filed in time to permit the conclusion of discovery 15 days before the date fixed for the hearing. A request for a subpoena to testify at the hearing shall be filed at least 3 days prior to the

hearing, unless otherwise allowed by the ALJ for good cause shown.

(c) *Content.* The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(d) *Service and fees.* Subpoenas shall be served, and fees and costs paid to subpoenaed witnesses, in accordance with Rule 45(b)(1) of the Federal Rules of Civil Procedure.

(e) *Motion to quash.* The individual to whom the subpoena is directed or a party may file a motion to quash the subpoena within 10 days after service, or on or before the time specified in the subpoena for compliance if it is less than 10 days after service.

#### § 26.43 Protective order.

(a) A party, a prospective witness, or a deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, as provided in Rule 26(c) of the Federal Rules of Civil Procedure.

#### HEARINGS

#### § 26.44 General.

(a) *Time of hearing.* The hearing shall commence not later than 90 days following the Government's filing of the complaint and response under § 26.37, unless the time is extended for good cause. The ALJ shall provide written notice to all parties of the reasons for any extension of time.

(b) *Location of hearing.* The hearing shall be held where the respondent resides or transacts business, or in such other place as may be agreed upon by the parties and the ALJ. Hearings for Program Fraud Civil Remedies Act cases shall be located in accordance with 31 U.S.C. 3803(g)(4).

(c) *Notice of hearing.* The ALJ shall issue a notice of hearing to all parties specifying the time and location of the hearing, the matters of fact and law to be heard, the legal authority under